

UNITED STATES DISTRICT COURT
FOR THE
DISTRICT OF VERMONT

UNITED STATES OF AMERICA :
: Case No. 2:01-cr-12
v. :
: DONALD FELL, :
: Defendant-Movant. :
:

ORDER

Donald Fell has moved for leave to conduct discovery pursuant to Rule 6 of the Rules Governing Section 2255 Proceedings. The motion, ECF No. 309, is **granted in part and denied in part**. The request for a discovery schedule, ECF No. 359, is **denied as moot**.

Fell's discovery motion seeks information to support his motion to vacate, set aside, or correct sentence, and for a new trial, pursuant to 28 U.S.C. § 2255. See ECF No. 301. It seeks leave to serve subpoenas and document requests on various state and federal entities. In its Memorandum Opinion and Order addressing the government's request for summary dismissal of the § 2255 motion, the Court dismissed some claims but allowed the remainder to proceed. Fell is entitled to take discovery, with Court approval, concerning his remaining claims. See Section 2255 Rule 6.

The first eighteen requests for discovery of documents

listed in Appendix A of Fell's motion are **granted**.¹ Request no. 19, "Any and all records, documents and communications concerning the decision of the United States Government to seek the death penalty against Mr. Fell," is **denied**. Request no. 20, "Any and all records, documents or communications regarding Mr. Fell's disability determination by the Social Security Administration and all documents from the Wilkes-Barre Social Security Office and the Office of Disability Determination," is **denied**.

The first fifteen requests for discovery of documents listed in Appendix B of Fell's motion are **granted**. Request no. 16, "In general, and for the reasons set out above and in the Initial Discovery Request, Mr. Fell requests unredacted versions of all redacted documents listed as withheld by the FBI pursuant to Mr. Fell's FOIA request," is **denied**. The request is insufficiently specific to determine whether good cause exists for the production. See Section 2255 Rule 6(a), (b).

The requests for discovery of documents from the Office of the Attorney General of the United States listed in Appendix C are **denied**.

The requests for discovery of documents from the United

¹ The Court notes that in the Government's opposition to Fell's discovery motion it agreed to provide some of these documents, and therefore the particular document request may be moot. Any disputes over the adequacy of production should be handled in compliance with Rule 26(d) of the Local Rules of Civil Procedure in addition to the Rules Governing Section 2255 Proceedings.

States Marshals Service listed in Appendix D are **granted**.

The requests for discovery of documents from the Vermont Department of Corrections and the Northwest State Correctional Facility listed in Appendix E are **granted**, with the exception of Request no. 6, for which good cause has not been shown. Request No. 6, "Any and all inmate complaints or grievances lodged against Officer Pelkey," is **denied**.

The parties shall submit a discovery schedule within thirty days of the date of this order. An evidentiary hearing will be scheduled for June, 2014.

Dated at Burlington, Vermont, this 10th day of May, 2013.

/s/ William K. Sessions III
William K. Sessions III
District Judge